

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

IN RE NATIONAL PRESCRIPTION

OPIATE LITIGATION

This document relates to:

Track One Cases

MDL 2804

Case No. 17-md-2804

Hon. Dan Aaron Polster

**ORDER GRANTING PLAINTIFFS' MOTION FOR LEAVE TO FILE SUR-REPLY TO
DISTRIBUTORS' CONSOLIDATED REPLY IN SUPPORT OF MOTIONS FOR
SUMMARY JUDGMENT ON PLAINTIFFS' CIVIL CONSPIRACY, RICO AND OCPA
CLAIMS (DKT. # 1904, 2183)**

Plaintiffs Summit and Cuyahoga County move this Court for leave to file a sur-reply to Distributors' Consolidated Reply in Support of Motions for Summary Judgment on Plaintiffs' Civil Conspiracy, RICO and OCPA Claims ("Distributors' RICO Reply").¹ Plaintiffs' Motion asserts that Distributors' RICO Reply makes new arguments not previously raised in their Memorandum in Support of Distributor Defendants' Motion for Summary Judgment on Plaintiffs' RICO and OCPA Claims (Dkt. 1904).

The Court agrees that a sur-reply is warranted in this instance because Distributors have raised new arguments in Distributors' RICO Reply. *See, Mirando v. U.S. Dep't of Treasury*, 766 F.3d 540, 548 (6th Cir. 2014) (when moving party submits new reasons in support of summary judgment in a reply brief "the district court should allow the nonmoving party an opportunity to respond"); *Seay v. Tennessee Valley Auth.*, 339 F.3d 454, 481 (6th Cir. 2003) ("When new submissions and/or arguments are included in a reply brief, and a nonmovant's ability to respond to the new evidence has been vitiated,

¹ Distributors' RICO Reply has not yet been filed on the docket.

a problem arises with respect to Federal Rule of Civil Procedure 56(c).”); *Filtrex Int’l, LLC v. Truelsen*, No. 5:12CV58, 2013 WL 587582, at *1 (N.D. Ohio Feb. 13, 2013) (“Because the defendants make new arguments ... in their reply brief ... the Court finds good cause for the plaintiff to file its surreply.”). As this Court has recognized, when defendants fail to develop an argument in their initial briefing, the Court should “decline[] to address arguments raised for the first time in Defendants’ reply brief.” Dkt. 2492, Opinion and Order Denying Motion to Exclude Keller at 3 n. 1 citing *Ross v. Choice Hotels Int’l, Inc.*, 882 F. Supp. 2d 951 (S.D. Ohio 2012) (“a reply brief is not the proper place to raise an issue for the first time”).

THEREFORE, IT IS ORDERED that Plaintiffs’ Motion for Leave to File Sur-Reply to Distributors’ Consolidated Reply in Support of Motions for Summary Judgment on Plaintiffs’ Civil Conspiracy, RICO and OCPA Claims (Dkt. # 1904, 2183) is GRANTED. Plaintiffs are directed to properly docket their Sur-Reply, previously filed as Exhibit A to their Motion.

IT IS SO ORDERED.

Dated: 8/21/19

/s/Dan Aaron Polster
HON. DAN AARON POLSTER
UNITED STATES DISTRICT JUDGE